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No. 02-1676 and consolidated cases

IN THE

Supreme Court of the United States

FEDERAL ELECTION COMMISSION, *et al.*
*Appellants*

*vs.*

SENATOR MITCH MCCONNELL, *et al.*
*Appellees.*

On Appeal from the United States
District Court for the District of Columbia

**Brief of Amicus Curiae**
**Professor David Moshman**
**Supporting Appellees**

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## INTEREST OF AMICUS[1]

David Moshman is a Professor of Educational Psychology at the University of Nebraska-Lincoln. He obtained his Ph.D., in Developmental Psychology from Rutgers University in 1977, M.S., in Developmental Psychology from Rutgers University in 1975, and B.A. in Psychology from Lehigh University in 1971.

Professor Moshman's expertise centers on the development of reasoning, rationality, morality, and identity in adolescence and early adulthood. This includes (a) logical and scientific reasoning; (b) the rational basis for morality and identity; and (c) the role of intellectual freedom in development and education. He has been regularly teaching a course on cognitive development since 1977 and a course on adolescent development since 1985. Dr. Moshman is serving or has served on the editorial boards of seven journals including Child Development, Journal of Research on Adolescence, Journal of Adult Development, and Developmental Review, and presently serves as Book Review Editor for the Journal of Applied Developmental Psychology and as Associate Editor of Educational Psychology Review.

Recent publications related to adolescent development authored by Dr. Moshman include:

1. David Moshman, *Cognitive development beyond childhood*. In W. Damon (Series Ed.) & D. Kuhn & R. Siegler (Vol. Eds.), Handbook of child psychology: Vol. 2. Cognition, perception and language (5th ed., pp. 947-978) (1998).

2. David Moshman, *Adolescent psychological development: Rationality, morality, and identity* (1999).

3. David Moshman, *Developmental change in adulthood*. In J. Demick & C. Andreoletti (Eds.), *Handbook of adult development* (pp. 43-61) (2003).

In 1990, Professor Moshman filed an amicus curiae brief with this Court in *Bd. of Education, Westside Community Schools v. Mergens,* 496 U.S. 226 (1990).

The present case, in part, considers the constitutionality of Section 318 of the Bipartisan Campaign Reform Act of 2002 (BCRA), Pub. L. No. 107-155, 116 Stat. 81 (enacted at 2 USC §441k (2003)), which prohibits minors from contributing to the committees of political parties and to candidates for federal office. This provision clearly restricts the freedom of minors to support political causes and candidates, which is of particular concern to Professor Moshman because of his interest and expertise in the intellectual and moral development of adolescents.

## SUMMARY OF ARGUMENT

BCRA eliminates all opportunity for minors to exercise their free speech rights to support federal political candidates or their parties by making contributions to them. Section 318 of BCRA states:

> An individual who is 17 years old or younger shall not make a contribution to a candidate or a contribution to a committee of a political

[1]The Department of Justice has consented to the filing of this brief as indicated in the copy of their letter being filed *instanter*. All other represented parties have filed written consents to the filing of amicus with the Court. Pursuant to Rule 37.6, amicus discloses that no counsel for any party in this case authored this brief in whole or in part and that monetary contribution to the preparation of this brief was received from the non-profit group, Justice Advocates.

party.

Title III, § 318, H.R. 2356, 107th Cong. (2002) (enacted at 2 USC §441k (2003)). This provision completely ignores the similarities between adolescents[2] and college aged adults, and the profound differences between adolescents and elementary aged children, in their ability to understand civic issues.

Research indicates that most adolescents are just as capable as most college aged individuals of comprehending abstract political issues such as civil rights. Moreover, encouraging adolescents to analyze current societal issues and make their voices heard in the political arena on matters of interest to them is a vital part of their educational process. When the government flatly prohibits adolescents from speaking in the form of making contributions, it greatly diminishes the ability of parents and educators to instruct these young people on how to be contributing citizens in our democratic society. The best method of teaching, especially young people, is to give the students direction and then encourage them to try it themselves. Section 318 makes it difficult, if not impossible, to teach adolescents how to swim in the process of political contributions, because it prevents them from getting in the pool.

## ARGUMENT

Our society and this Court have recognized that an important method of expressing one's support of a candidate for office, or political party, is to contribute funds to them. *Buckley v. Valeo,* 424 U.S. 1, 14 (1976). The United States Government has taken this right away from all minors, including adolescents, based solely on the interest of prohibiting their

[2]In this brief, the term "adolescents" generally refers to children ages 12 through 17.



***parents*** from circumventing ceilings on amounts given by donating in the names of their minor children. No interest in protecting children has ever been asserted in this case as a rationale for prohibiting political contributions of minors. In fact, research indicates that adolescents can and should participate in the process of supporting political causes and candidates in order to learn about our democratic system of government.

## I. ADOLESCENTS ARE CAPABLE OF MAKING INDEPENDENT CHOICES REGARDING SUPPORT OF POLITICAL CAUSES AND CANDIDATES.

By enacting Section 318, Congress has made a distinction between most college students, and adolescents who are in high school.[3] But studies in this area indicate that adolescents are capable of understanding and making rational judgments regarding their civic duties and liberties as citizens.

> "Sophisticated conceptions of civil liberties ...emerge by early adolescence and are used to evaluate social events." . . .To the extent that understanding of intellectual freedom involves an ability to make abstract judgments independent of content, the results support the view that the nature of intellectual freedom is understandable by early adolescence.

David Moshman, *Adolescent Reasoning and Adolescent Rights,* 36 Human Development 27, 32-33 (1993) ("Adolescent Reasoning") (quoting C.C. Helwig, *Continuity and*

[3]It is worth noting, however, that many college students are seventeen years of age when they begin their secondary education. Even though they can attend college, often times hundreds of miles away from home, they cannot make political contributions because they are under eighteen.

*Discontinuity in Moral Judgment,* Paper presented at the annual meeting of the Jean Piaget Society (1991)). Adolescents have the ability to learn about political issues, formulate opinions regarding these issues, and express these opinions to their peers as well as society as a whole.

In this regard, even adolescents ages 12 and 13 are more like college students than like students in elementary school. "[S]tudies showed that with brief instruction, involving definition of validity, examples, and/or feedback, seventh graders were comparable to college students in their ability to distinguish the validity of arguments from the truth or falsity of their content, whereas fourth graders did not profit from such instruction." *Adolescent Reasoning* at 33.

There may be occasions when adolescents need to be protected from physical and psychological harm as they are developing, and should not be treated the same as adults. For instance, this Court has upheld restrictions on minors' access to obscene material, *see Ginsberg v. New York,* 390 U.S. 629, 637-38 (1968), and to abortion, *see Bellotti v. Baird,* 443 U.S. 622, 634 (1979). However, there is no similar possible harm to adolescents in allowing them to express themselves and associate with, for instance, an individual running for senate, by giving them a donation.

> One might, for example, argue for a more stringent criterion of maturity with respect to freedom to engage in potentially harmful overt behaviors (such as use of guns, cars, or legal drugs) than with respect to expression of beliefs (such as advocacy of gun control or drug use). Ideas can be dangerous, of course, but the dangers of expression, compared to those of overt action, are likely to be long-term, speculative, and reversible through discussion.



*Adolescent Reasoning* at 36.

The government has prohibited adolescents from expressing their support for, and associating with, political causes and candidates by giving money. There is no evidence that adolescents are incapable of properly wielding this freedom, or that allowing such expression will cause them any harm. On the contrary, as indicated below, it will help them learn how to be a contributing member of our democratic society.

## II. PROHIBITING ADOLESCENTS FROM MAKING CAMPAIGN CONTRIBUTIONS HAS AN ADVERSE EFFECT ON EDUCATING YOUNG PEOPLE IN THE POLITICAL PROCESS.

Some of the justifications this Court has recognized as a basis for restricting the rights of minors are a child's "inability to make critical decisions in an informed, mature manner, and the importance of the parental role in child rearing." *Bellotti v. Baird,* 443 U.S. 622, 634 (1979). However, Section 318 actually inhibits an adolescent's ability to learn how to make critical decisions, and infringes upon the parental role in child rearing.

"[C]urrent theory and research suggest that, if there is ever a time when the opportunity to generate, explore, and discuss ideas freely is especially critical to one's development, it is adolescence." *Adolescent Reasoning* at 34. Becoming involved in the campaign process is an excellent opportunity for adolescents to learn by analyzing the different positions of candidates and parties, then developing and expressing their own views on these positions.

It is widely agreed that learning and

> development are positively related to the opportunity to interact freely with peers, to consider multiple points of view, to formulate and express one's own ideas, to reflect on one's own thinking, and to work at resolving cognitive contradictions and social conflicts. ...Students should have broad access to information and ideas and should be actively encouraged to formulate, express, and discuss their views.

*Adolescent Reasoning* at 35. *See also* DAVID MOSHMAN, ADOLESCENT PSYCHOLOGICAL DEVELOPMENT: RATIONALITY, MORALITY, AND IDENTITY 113 (1999) ("ADOLESCENT PSYCHOLOGICAL DEVELOPMENT") ("one would expect the construction of rationality to be facilitated by social environments in which individuals have free access to information and ideas and are encouraged to formulate, express, discuss, and justify ideas of their own.")

Most parents want their adolescent to learn the importance of independent thinking and political expression. Section 318 completely eliminates parents' ability to teach their children through hands on experience how to express their political views by donating money. Research indicates that "[g]overnmental restrictions on adolescents, then, merit critical scrutiny because they are likely to interfere not only with adolescent autonomy but with family relations and cultural practices." *Adolescent Reasoning* at 37. *See also id.* at 38 ("the sorts of restrictions on adolescents most likely to be justifiable are restrictions by parents on their own children's overt behavior. ...[T]he sorts of restrictions least likely to be justifiable are restrictions by governmental agents on adolescents' beliefs, expression, and access to information and ideas.")



Teaching adolescents how to become informed, contributing participants in the political process not only benefits them, but is vital to the health and future of our democratic society. As noted by a distinguished philosopher of education, Israel Scheffler,

> [t]he function of education in democracy is rather to liberate the mind, strengthen its critical powers, inform it with knowledge and the capacity for independent inquiry, engage its human sympathies, and illuminate its moral and practical choices. This function is, further, not to be limited to any given subclass of members, but to be extended, in so far as possible, to all citizens, since all are called upon to take part in the processes of debate, criticism, choice, and co-operative effort upon which the common social structure depends.

Adolescent Psychological Development at 112.

Simply put, learning how to express oneself in the political arena by contributing funds to candidates and parties is an important lesson to be learned as an adolescent. By eliminating the crucial teaching tool of hands on experience, the government has tied the hands of parents and educators attempting to accomplish this task.

## CONCLUSION

The foregoing research and analysis demonstrate adolescents are mature enough to properly exercise the freedom to make the political contributions that BCRA prohibits. Moreover, the prohibition on campaign contributions adversely affects adolescents by eliminating an important learning tool during a critical time for educating young people in the political

process.

Therefore, the judgment below holding Section 318 of BCRA unconstitutional should be affirmed.

Respectfully submitted,

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